missed and on Zilah we impose a sentence of eight years' imprisonment.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons*; *Yeap & Yeap*; *Raj & Co.*

PUBLIC PROSECUTOR v. ROUTLEY

[R.Cr.J. (Simpson J.) January 16, 1964]

[Jesselton — Criminal Revision No. 1 of 1964]

Criminal Procedure—Plea of guilty by letter—Road Traffic Ordinance (Sabah Cap. 128), s. 16—Criminal Procedure Code (Sabah No. 4 of 1959), s. 169(2).

Road Traffic Ordinance (Sabah Cap. 128), s. 16(1) & (2)—Riding motorcycle under influence of drink—Offence under s. 16(1)—Pleading guilty by post—Whether acceptance of plea by Magistrate correct—Endorsement of licence—Sentence.

A plea of guilty by letter cannot be accepted from an accused charged under section 16(1) of the Road Traffic Ordinance (Sabah Cap. 128) because the maximum punishment permitted under that section is 12 months imprisonment whereas pleas by way of letters can only be accepted in respect of offences which do not carry a maximum punishment beyond 6 months imprisonment.

CRIMINAL REVISION.

Simpson J.: The accused was charged with riding a motorcycle under the influence of drink to such an extent as to be incapable of having proper control, an offence under section 16(1) of the Road Traffic Ordinance (Cap. 128).

He pleaded guilty by letter, was convicted and fined $10. No other order was made.

This is a serious offence and while the penalty is of course in the discretion of the Magistrate there can be no doubt that a fine of $10 is manifestly inadequate whatever the circumstances. Moreover under section 16(2) the Court is bound to order endorsement of the licence and disqualification for not less than 12 months. The period of disqualification may be reduced or the order dispensed with only on proof of special circumstances. Such special circumstances must be directly connected with the commission of the offence, for example the administration of a drug to a driver without his knowledge. A circumstance peculiar to the offender such as financial hardship cannot normally be taken into account. It is the duty of the Magistrate to point out the result of a conviction for this offence and to ask the offender if he wishes to give evidence of special circumstances.

In this case the accused pleaded guilty by letter. Section 169(2) of the Criminal Procedure Code which deals with pleas of guilty by letter however excludes offences punishable by fine and imprisonment for a period exceeding six months. This offence is punishable under section 16(1) with a fine and imprisonment for 12 months.

An opportunity to plead guilty by letter should not therefore have been afforded to the accused and his plea must be disregarded. I therefore quash the proceedings and order a retrial before the same or another Magistrate. There is nothing to prevent the accused claiming trial should he so wish.

Re-trial ordered.

TAN HONG CHIT v. LIM KIN WAN

[F.C. (Barakbah C.J. (Malaya), Azmi & Suffian JJ.) January 30, 1964]

[Kuala Trengganu — Federal Court Civil Appeal No. 7 of 1963]

Land Laws—Malay reservation land held by non-Malay—Land acquired before it become Malay reservation—Transfer or charge to non-Malay—Whether approval of Ruler-in-Council required—Malay Reservation Enactment, 1930, ss. 3, 7 and 13A(iii).

Interpretation—Disabling statute—Construction in favour of freedom of individual.

Under section 13A(iii) of the Malay Reservation Enactment, 1930, when a piece of land in the Malay Reservation area is registered in the name of a non-Malay who had acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without obtaining the approval of the Ruler-in-Council. But once a non-Malay registered owner transfers or charges the land to a "Malay" as defined in section 3(i) of the Enactment then the new Malay registered owner cannot transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council.

Per Suffian J.: where there is ambiguity as to the meaning of a disabling statute the construction which is in favour of the freedom of the individual should be given effect to.

Decision of Hashim J. ([1963] M.L.J. 100) affirmed.

Case referred to:—

(1) *David* v. *De Silva* [1934] A.C. 106.

FEDERAL COURT.

Wan Mustapha bin Haji Ali for the appellant.

Isahak Hamid for the respondent.

Cur. Adv. Vult.

Suffian J.: Three pieces of lands are involved in this appeal, lots numbers 26, 27 and 29 all in the District of Kota Bahru, Kelantan.

Gan Mek, a Chinese, became the registered proprietor of the first piece on 23rd September 1923 and of the second piece on 26th March 1925 and Choa Bon Sek, also a Chinese, was the registered proprietor of the third piece. Then the Malay Reservation Enactment, 1930, was enacted. By *Gazette* Notification No. 56 dated 9th December, 1930 the administrative district of Kota Bahru, in which these lands are situate, was declared by the Ruler-in-Council under section 4